

# SUMMARY OF PUBLIC COMMENTS AND RESPONSE TO COMMENTS PROPOSED RULE CHANGE

## Rule R313-17, Administrative Procedures

February 27, 2012

### Introduction

On November 8, 2011, the Utah Radiation Control Board approved the Utah Division of Radiation Control (DRC) to file with the Division of Administrative Rules a proposed rule change to Utah Administrative Code (UAC) R313-17, *Administrative Procedures*. The proposed rule was published in the December 1, 2011 edition of the *Utah State Bulletin* and this action initiated a 30 day public comment period. The comment period ended on January 3, 2012.

Written comments received during the public comment period were reviewed. In all, three commenters submitted comments, including HEAL Utah, Uranium Watch, and Living Rivers. Each separate comment (ten in all) was determined to be related or unrelated to the proposed rule changes. For comments judged to be applicable to the proposed rulemaking, a response was prepared and is presented in Attachment A. Comments received that were unrelated to the proposed rule but involve public policy or were outside the scope of the proposed rule are summarized in the following table:

Comment Source	Unrelated Comment Topic	Number of Comments Received
Uranium Watch and Living Rivers	DRC failed to post the opportunity to comment about R313-17 on the DRC Webpage.	1
Uranium Watch and Living Rivers	DRC must make sure that all documents that are relevant to a proposed licensing action are readily available to the public on the DRC Website.	1

### Summary

Other requirements in the rules for notice and comment will not be affected by this rulemaking. Original comments received from the three parties are found in Attachment B, below. From these, ten specific comments were considered related, and two were unrelated to the context of the proposed rule. The comments that related to the proposed rule supported the rulemaking or specifically dealt with adding language for clarity or additional examples of major licensing actions. The related comments are summarized below.

In a letter dated, January 3, 2012, HEAL-Utah proposed additional language so that determinations made by the Executive Secretary under UAC R313-25-8 (1) and (2) also be considered major licensing actions subject to public comment.

Together, Uranium Watch and Living Rivers submitted comments in a January 3, 2012 letter, and they stated their support for the proposed rulemaking. They offered four specific comments

on UAC R313-17-2(1)(a)(i)(F), and two additional examples of major licensing actions the rule should include. The first comment concerning UAC R313-17-2(1)(a)(i)(F) claimed that additional explanation is needed so the rule includes workers. The second comment was that the DRC should establish a policy or regulation that describes exactly how the DRC or licensee will determine whether any change will cause an individual to receive a higher total effective dose equivalent. For the third comment, Uranium Watch and Living Rivers suggested that there is a conflict between the rule and possible decisions made by a Safety and Environmental Review Panel (SERP), established at the White Mesa Mill, because the SERP has been granted authority to make changes to the operation of the mill, without requesting a license amendment, when certain conditions are met. Finally, the groups stated that DRC must recognize that any major licensing action for uranium recovery and 11e.(2) byproduct disposal requires compliance with UAC R313-24-3. Uranium Watch and Living Rivers also recommended that major licensing actions should be expanded to include: 1) an extension of a license without a submittal of and approval of a license renewal request and 2) the establishment of "reclamation milestones" at uranium recovery facilities.

After consideration of the DRC staff comments, the Executive Secretary recommends that the Utah Radiation Control Board adopt the rule as originally proposed.

Attachments: A. Summary of Comments and DRC Responses  
B. Original Public Comments

**ATTACHMENT A**  
**RESPONSES TO PUBLIC COMMENTS**

The DRC's responses to the comments related to the proposed rulemaking are provided below.

1. HEAL-Utah proposed additional language to the rule so that determinations made by the Executive Secretary under R313-25-8 (1) and (2), related to proposed waste streams and previously approved performance assessments, also be considered major licensing actions subject to public comment. HEAL-Utah offered language for an additional provision under R313-17-2(1)(a)(i) as follows: *(K) Determinations made by the Executive Secretary regarding the approval of performance assessments or the applicability of prior performance assessments under R313-25-8 (1) or (2).*

**Response:**

The DRC does not agree that this additional language is necessary because:

- 1) Performance assessments (PA) form the fundamental basis for a disposal embankment's approved engineering design, construction, and waste disposal procedures. In fact, PA analysis is the means by which the Executive Secretary determines if a member of the public could "... receive a higher total effective dose equivalent on [an] increase [in] the annual quantity of radioactive effluents released to the environment." Hence, the proposed requirement at R313-17-2(1)(a)(i)(F) is broader and more protective of the environment than the rules found in R313-25-8(1) and (2), which govern only new proposed radioactive waste streams, and
- 2) The provisions of Subsection R313-17-2(1)(a)(i)(J) allow the Executive Secretary to determine that a licensing issue, like the one described by HEAL-Utah, is of significant public interest. The intent of Subsection R313-17-2(1)(a)(i)(J) is to give the Executive Secretary some added discretion about the need for soliciting public comment on a licensing issue. Since it may not be possible to write a rule that lists all possible licensing issues of significance known today or even foreseeable in the future, the general nature of Subsection R313-17-2(1)(a)(i)(J) adequately addresses this matter.

It is also important to note that because performance assessments are fundamental to waste embankment engineering design, construction, and disposal operations, that significant alterations of these approved activities, would demand close examination and prior approval by the Executive Secretary.

2. Uranium Watch and Living Rivers offered a comment of support as follows: *Generally, UW and Living Rivers support the DRC's proposed rulemaking. It is a good idea to clearly identify the types of licensing actions that are considered major, or significant, licensing actions, which require a public notice and opportunity for public comment.*

**Response:**

The DRC noted and appreciates this comment.

3. Uranium Watch and Living Rivers provided four specific comments concerning R313-17-2(F) (sic), as provided in italics below:

*"The new UAC R313-17-2(F) states that major licensing actions include: " 'A change in engineering design, construction, or process controls that will more than likely cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment.' "*

*3.1 This proposed definition needs additional explanation. The DRC must state that the rule includes workers as individuals who may receive a higher total effective dose equivalent.*

**Response:**

The DRC does not believe additional explanation is needed because "individual" is already defined in UAC R313-12-3, and includes workers, among others. The DRC recognizes that licensees must be compliant with requirements for a variety of dose limits. It is the DRC practice to evaluate a licensee's state of compliance with the annual dose limits for occupational workers as adults or minors, members of the public, and the embryo/fetus, as applicable. The dose limits for the individuals listed above are stated in UAC R313-15.

*3.2 DRC should establish a policy or regulation that describes exactly how the DRC or licensee will determine whether any change to the engineering design, construction, or process controls will "cause an individual to receive a higher total effective dose equivalent." Currently, with respect (sic) uranium mills, the methods for determining a higher total effective dose equivalent for workers and members of the public involves compliance (sic) a number of federal and state regulatory standards. There is a great need for complete information regarding the precise methods used to determine compliance with those standards. Additionally, there is a need for specific requirements for a showing of annual compliance with those standards. For example: 1) It is not clear how a uranium mill licensee calculates the dose to the nearest individual in compliance with R313-15-301(1), because the data and information and method of calculation are not available to the public; 2) Uranium mill monitoring stations are not required to measure radon progeny emissions; and 3) uranium mills are not required to annually calculate the dose to the nearest individual in compliance with R313-15-301(1) and (2), nor calculate the dose when there are changes in the operation at the mill that could result in an increase of radionuclide emissions. Therefore, there does not appear to be any reliable basis for the DRC or the public to determine whether a proposed change in a uranium mill operation would likely "cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment."*

**Response:**

DRC agrees that it would be helpful to have a policy to address the comment and such a policy is being developed. It is not likely to be incorporated into rule, however, since there will be a number of site-specific factors that would make it inappropriate to require a precise methodology. The DRC does not believe that a change is needed to UAC R313-17-2. It may be instructive to point out that the various annual dose limits are set by rule (see response to comment 3.1, above) and there exists a number of means for a licensee to demonstrate compliance with the requirements. Since the current regulatory perspective of the Nuclear Regulatory Commission and many Agreement States involves the establishment of radiation safety requirements that are performance based, the DRC does not believe it is necessary to write prescriptive requirements for how a licensee is to demonstrate compliance.

It may be helpful for the commenters to know that it is common for uranium mill licensees to use the MILDOS-AREA computer code to calculate the radiological dose commitments received by individuals and the general population within an 80 kilometer radius of an operating uranium recovery facility. Air and soil concentrations of radionuclides can be estimated for individual locations, as well as for a generalized population grid through the use of this computer code.

*3.3 Rule R313-17-2(F) appears to conflict with the program for the White Mesa Mill that established a Safety and Environmental Review Panel (SERP) and grants the SERP authority to make changes to the operation of the mill, without requesting a license amendment, when certain conditions are met. That means that there could be changes in the mill's engineering design, construction, or process controls that would likely cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment – and the DRC and the public would not be aware of those operational changes until after the fact. That happened recently when the White Mesa Mill licensee constructed a new alternate feed circuit. Therefore, the DRC must require any licensee with a SERP program to notify the DRC of any operational changes that the SERP is considering prior to SERP's consideration of the changes and prior to any construction or implementation of the operational changes. The DRC must also make the notifications publicly available in a timely manner. That way, the DRC and the public will have an opportunity to determine whether any proposed operational changes have the potential to increase emissions or individual doses.*

**Response:**

The DRC appreciates this comment and also recognizes the apparent conflict. The DRC notes that the commenters have provided comments on the license renewal action being considered for the White Mesa Mill and one such comment is similar to comment 3.3. To address this concern, the DRC as a part of the White Mesa uranium mill license renewal process will consider an improvement to license condition 9.4(B), as allowed by UAC R313-22-34(2). The DRC notes that an annual report of SERP activities is provided by the licensee to the DRC. To improve upon the timely transfer of

information, the DRC will follow up on SERP meetings / decisions during each quarterly inspection of the facility.

*3.4 The DRC must also recognize that any major licensing actions for uranium recovery and 11e.(2) byproduct disposal require compliance with R313-24-3 and 42 U.S.C. §2021(o)(3). This means: 1) the license (sic) must submit an environmental report on the proposed action, 2) the DRC must develop an environmental analysis of the proposed action, 3) the DRC's environmental analysis must be made available for public comment, and 4) no construction can take place until the environmental analysis has been developed and made available for public comment.*

**Response:**

The DRC notes the importance of this comment, is aware of the environmental analysis / report requirements of UAC R313-24-3 and the need to require compliance with these requirements. The DRC does not believe there is a need to change UAC R313-17 to resolve the comment. The comment is focused on requiring compliance with other applicable rules as part of the license amendment action rather than identifying when public participation is appropriate – the purpose of the rule change.

Further, the Executive Secretary reserves the right to title his environmental analysis as he deems appropriate. Such titles may include: technical analysis, statement of basis, safety evaluation report, technical assessment, or environmental assessment. The purpose of the report required by UAC R313-24-3 is to advise the public of the environmental issues of concern.

It is and will continue to be the DRC policy that such agency actions are noticed for comment, public comments are received, and comments are addressed before license issuance / amendment, and substantive construction begins at the licensee's facility. There may be an opportunity for improvement to the DRC's Administrative Procedures document, in order to clarify the need to complete public comment before major construction for actions involving uranium mill license issuance, renewal, or major amendments. It may be helpful to also note that the DRC believes there is ample authority regarding the commencement of construction in UAC Subsection R313-22-33(1)(f).

4. Uranium Watch and Living Rivers provided two specific comments concerning additional "major" licensing actions:

*4.1 The DRC should include the "extension of a license without a submittal of and approval of an license renewal request" as a major licensing action that requires public notice a public comment period (sic). In fact, the DRC recently noticed such a request and provided an opportunity for public comment. This request was for a 2-year extension of the Shootaring Canyon Uranium Mill license.*

**Response:**

The DRC acknowledges this comment, but does not believe a specific listing is needed for the reason stated in the response to Comment 1 regarding the discretion provided by Subsection R313-17-2(1)(a)(i)(J)<sup>1</sup>.

*4.2 The DRC should also include the establishment of "reclamation milestones" at uranium recovery facilities as major licensing actions that require public notice and a public comment period. Uranium mills are required to establish reclamation milestones for tailing impoundments that are undergoing closure and the mill itself when it is being reclaimed, pursuant to 10 C.F.R. Part 40 Appendix A, Criterion 6A, and 40 C.F.R. Part 192, Subpart D. The Nuclear Regulatory Commission (NRC) and NRC Agreement States are required to publish a public notice and provide an opportunity for public comment upon receipt of a license amendment application to establish reclamation milestones and publish a public notice and provide an opportunity for public comment of the proposed issuance of the amendment establishing the reclamation milestones. These requirements were developed when the Environmental Protection Agency (EPA) rescinded 40 C.F.R. Part 61 Subpart T, as it applied to uranium mills regulated by the NRC and Agreement States, and the NRC and EPA amended their rules at 10 C.F.R. Part 40 Appendix A and 40 C.F.R. Part 192 Subpart D to include the establishment of reclamation milestones.*

**Response:**

The DRC is aware of the requirements and appreciates the commenters' concerns, but does not believe such a change is needed, given the fact that:

- 1) Reclamation milestones are a common element of uranium mill reclamation plans, and
- 2) The proposed rule at R313-17-2(1)(a)(i)(H) will require the DRC provide public notice and opportunity for public comment when a reclamation plan is being considered for approval.

The DRC also wants to note that it has already taken measures with two uranium mill licensees to improve conditions as they relate to the reclamation of their facilities. Furthermore, the commenters have already provided comments on the license renewal action being considered for the White Mesa Mill and one such comment is similar to comment 4.2, above. During consideration of those public comments, already received, the DRC will review the need for a new or modified license condition, pursuant to UAC R313-22-34(2). As a part of this evaluation, the DRC will consider the requirements of R313-24-4 and 10 CFR 40, Appendix A, Criterion 6A.

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<sup>1</sup> In the case of the recently proposed Shootaring Canyon uranium mill license extension, the Executive Secretary made public notice and provided opportunity for comment, consistent with the proposed rule change at R313-17-2(1)(a)(i)(J).

ATTACHMENT B

ORIGINAL COMMENTS RECEIVED FROM  
HEAL UTAH  
Dated January 3, 2012

AND

URANIUM WATCH / LIVING RIVERS  
Dated January 3, 2012



**ADVISORY COUNCIL**

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**UTAH POWERING ACTION  
TO PROTECT UTAH**

January 3, 2012

*Sent via email to: [rlundberg@utah.gov](mailto:rlundberg@utah.gov) and [cwjones@utah.gov](mailto:cwjones@utah.gov)*

Dear Mr. Lundberg:

I am writing to convey comments to you regarding proposed revisions to rule R313-17-2.

Please consider including an additional provision under R131-17-2 that specifies that determinations made by the Executive Secretary under R313-25-8 (1) and (2) also be considered major licensing actions subject to public comment.

For instance, there could be an additional provision under R313-17-2 (1) (a) (i):

(K) Determinations made by the Executive Secretary regarding the approval of performance assessments or the applicability of prior performance assessments under R313-25-8 (1) or (2)

Thank you for considering this comment. Please feel free to contact me if you have any questions or would like to discuss this letter further.

Sincerely,

-Christopher Thomas

Executive Director

HEAL Utah

801-356-5110

# Uranium Watch

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January 3, 2012

Via electronic mail

Mr. Rusty Lundberg  
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RE: Comments on Proposed Changes to Utah Administrative Code R313-17

Dear Mr. Lundberg:

Below please find these revised comments by Uranium Watch and Living Rivers on the proposed changes to Rule R313-17 of the Utah Administrative Code (UAC). This rule affects the requirements for the Public Notice and Comment Period for licensing actions associated with certain categories of radioactive material processing and waste disposal facilities, including uranium recovery facilities and 11e.(2) byproduct material disposal facilities.

**1. Public Notice.** Ironically, the Division of Radiation Control (DRC) failed to post the opportunity to comment on the proposed changes to R313-17 on the DRC webpage where the DRC usually posts "Proposed rulemaking actions in publication to provide legal notice to the public and receive public review and comment."<sup>1</sup>

**2. Support of Rulemaking.** Generally, UW and Living Rivers support the DRC's proposed rulemaking. It is a good idea to clearly identify the types of licensing actions that are considered major, or significant, licensing actions, which require a public notice and opportunity for public comment.

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<sup>1</sup> [http://www.radiationcontrol.utah.gov/Rules/rulemaking\\_actions.htm](http://www.radiationcontrol.utah.gov/Rules/rulemaking_actions.htm)

**3. R313-17-2(F).** The new UAC R313-17-2(F) states that major licensing actions include: "A change in engineering design, construction, or process controls that will more than likely cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment."

3.1. This proposed definition needs additional explanation. The DRC must state that the rule includes workers as individuals who may receive a higher total effective dose equivalent.

3.2. DRC should establish a policy or regulation that describes exactly how the DRC or licensee will determine whether any change to the engineering design, construction, or process controls will "cause an individual to receive a higher total effective dose equivalent." Currently, with respect uranium mills, the methods for determining a higher total effective dose equivalent for workers and members of the public involves compliance a number of federal and state regulatory standards. There is a great need for complete information regarding the precise methods used to determine compliance with those standards. Additionally, there is a need for specific requirements for a showing of annual compliance with those standards. For example: 1) It is not clear how a uranium mill licensee calculates the dose to the nearest individual in compliance with R313-15-301(1), because the data and information and method of calculation are not available to the public; 2) Uranium mill monitoring stations are not required to measure radon progeny emissions; and 3) Uranium mills are not required to annually calculate the dose to the nearest individual in compliance with R313-15-301(1) and (2), nor calculate the dose when there are changes in the operation at the mill that could result in an increase of radionuclide emissions. Therefore, there does not appear to be any reliable basis for the DRC or the public to determine whether a proposed change in a uranium mill operation would likely "cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment."

3.3. Rule R313-17-2(F) appears to conflict with the program for the White Mesa Mill that established a Safety and Environmental Review Panel (SERP) and grants the SERP authority to make changes to the operation of the mill, without requesting a license amendment, when certain conditions are met. That means that there could be changes in the mill's engineering design, construction, or process controls that would likely cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment—and the DRC and the public would not be aware of those operational changes until after the fact. That happened recently when the White Mesa Mill licensee constructed a new alternate feed circuit. Therefore, the DRC must require any licensee with a SERP program to notify the DRC of any operational changes that the SERP is considering *prior* to SERP's consideration of the changes and *prior* to any construction or implementation of the operational changes. The DRC must also make the notifications publicly available in a timely manner. That way, the DRC and the public will have an opportunity to determine whether any proposed operational changes have the potential to increase emissions or individual doses.

3.4. The DRC must also recognize that any major licensing actions for uranium recovery and 11e.(2) byproduct disposal require compliance with R313-24-3 and 42 U.S.C. § 2021(o)(3). This means: 1) the license must submit an environmental report on the proposed action, 2) the DRC must develop an environmental analysis of the proposed action, 3) the DRC's environmental analysis must be made available for public comment, and 4) no construction can take place until the environmental analysis has been developed and made available for public comment.

#### **4. Additional "major" licensing actions:**

4.1. The DRC should include the "extension of a license without a submittal of and approval of an license renewal request" as a major licensing action that requires public notice a public comment period. In fact, the DRC recently noticed such a request and provided an opportunity for public comment. This request was for a 2-year extension of the Shootaring Canyon Uranium Mill license.

4.2. The DRC should also include the establishment of "reclamation milestones" at uranium recovery facilities as major licensing actions that require public notice and a public comment period. Uranium mills are required to establish reclamation milestones for tailings impoundments that are undergoing closure and the mill itself when it is being reclaimed, pursuant to 10 C.F.R. Part 40 Appendix A, Criterion 6A, and 40 C.F.R. Part 192, Subpart D. The Nuclear Regulatory Commission (NRC) and NRC Agreement States are required to publish a public notice and provide an opportunity for public comment upon receipt of a license amendment application to establish reclamation milestones *and* publish a public notice and provide an opportunity for public comment of the proposed issuance of the amendment establishing the reclamation milestones. These requirements were developed when the Environmental Protection Agency (EPA) rescinded 40 C.F.R. Part 61 Subpart T, as it applied to uranium mills regulated by the NRC and Agreement States, and the NRC and EPA amended their rules at 10 C.F.R. Part 40 Appendix A and 40 C.F.R. Part 192 Subpart D to include the establishment of reclamation milestones.

**5. Public Availability of Documents.** The DRC must make sure that all documents that are relevant to a proposed licensing action are readily available to the public on the DRC website. This includes any application or documents cited in the application that have previously been submitted to the DRC. A member of the public should not have to make a Utah Government Records Access and Management Act (GRAMA) request during the public comment period in order to have access to pertinent records. Some time ago I brought to the attention of the Radiation Control Board the need for all uranium mill licensing documents to be made available electronically, as the mill licensing documents had been when the NRC regulated Utah uranium mills and 11e.(2) byproduct material disposal facilities. On at least two occasions before the Board, DRC staff informed me that the Department of Environmental Quality was in the process of establishing a web-based program that would enable the DRC to post licensing documents for uranium mills

Rusty Lundberg/DRC  
January 3, 2012

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on a DRC website. Therefore, I was mislead, because this has never happened. Only some licensing documents are available electronically; the rest must be obtained via a GRAMA request. It is impossible for the public to submit informed comments on major licensing actions if the relevant documents are not readily available in a timely manner.

Thank you for providing this opportunity to comment.

Sarah Fields  
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